

### REMARKS

In the Office Action mailed March 07, 2008, the Examiner rejected claims 1-14 and 21-26. By way of the foregoing amendments and the markings to show changes to amended claims 1, 11 and 21, Applicants respectfully submit that the application is in condition for allowance. Claim 1 is rewritten to include the limitations of dependent claims 7 and 8. Claim 11 is rewritten to include dependent claims 12 through 14. Claim 21 is rewritten to include the limitations of dependent claims 22-26. Entry of the Amendment is therefore respectfully requested as the amendment is authorized by the rules. Furthermore, claims 2-10, and 12-20 and 22-27 have been cancelled. Reconsideration of the application as submitted is respectfully requested. The foregoing amendments are taken in the interest of expediting prosecution and there is no intention of surrendering any range of equivalents to which Applicant would otherwise be entitled in view of the prior art.

Further, by the present amendment, it does not follow that the amended claims have become so perfect in their description that no one could devise an equivalent. After amendment, as before, limitations in the ability to describe the present invention in language in the patent claims naturally prevent the Applicants from capturing every nuance of the invention or describing with complete precision the range of its novelty or every possible equivalent. See, Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co., 62 USPQ2d 1705 (2002). Accordingly, the foregoing amendments are made specifically in the interest of expediting prosecution and there is no intention of surrendering any range of equivalents to which Applicants would otherwise be entitled.

### Claim Rejections-35 USC § 103

Claims 1, 2, 4, 5, and 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hellsten (SE 9603040-8).

In an embodiment of the present invention, a building block is provided. The block includes a plurality of straw stalks having natural occurring binding agents processed to form a rectangular block for building. The entire block is substantially formed of straw stalks. The block further includes a first rigid wall and a second rigid wall opposite of the first rigid wall, and one or more sidewalls connecting the first and second walls. The first and second walls having a higher density of straw stalks than an interior portion of the block being formed of straw stalks. The block also includes an added binder in contact with the straw stalks. The block

further includes a moisture inhibitor in contact with the straw stalks. The aforementioned features are set forth in claim 1.

The Hellsten patent discloses a method for producing building blocks of compressed straw.

The Supreme Court decision in *KSR v. Teleflex*, 82 USPQ2d 1385, articulated that the key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR* asserted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. As such, it is respectfully submitted that the Examiner has not performed a proper *KSR* analysis and set forth specific arguments to support the rejection of amended independent claim 1. Amended claim 1 incorporates the subject matter from presently canceled dependent claims 7 and 8, which the Examiner did not set forth arguments to address either.

Claim 1 of the present application includes the limitation of a moisture inhibitor in contact with the straw stalks. The moisture inhibitor is used to increase the longevity of the block, in order to help prevent mold, rot, etc. However, the Hellsten reference does not disclose usage of a moisture inhibitor, as set forth in claim 1. The Examiner asserts that the microwave of Hellsten is "a moisture inhibitor as the use of the microwave would remove the moisture and the waves would contact the straw, meeting the limitations of the claims." Applicants believe that the Examiner has relied upon incorrect fact findings, the findings do not make sense because the Examiner has not explained how a microwave functions as a moisture inhibitor. Applicants believe that such knowledge is not obvious to one skilled in the art and request that the Examiner provide sound evidentiary support for the allegation that a microwave is a moisture inhibitor. Applicants' understanding of a microwave is that microwave heat results from the electromagnetic wave generated by the microwave being passed through the substance desired for heating, heat results from the absorption of energy by the water molecules within the particular substance desired to be heated. The microwave does not remove moisture (water), in contrast, the microwave uses the moisture (water) to heat the particular substance the microwave is being applied to. Furthermore, Applicants disagree with the Examiner on the basis of findings about what is taught in the art. While the ultimate determination of obviousness is a legal conclusion, the underlying *Graham* inquiries are factual. When making an obviousness rejection, Office personnel must ensure that the written record includes findings of fact concerning the state of the art and the teachings of the references applied. Applicants

submit that the Examiner has not rendered proper findings via Graham. Nonetheless, it is respectfully submitted that Applicants present amendment to the claim clearly overcomes the Examiner's assertion that the microwave in Hellsten is a moisture inhibitor.

Accordingly, a prima facie case of obviousness has not been established, and as such, Applicant respectfully requests the allowance of claim 1.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hellsten (SE 9603040-8) in view of Hewlett (US 1,604,097). The Examiner asserted "Hellsten teaches the claimed invention except for the use of holes. It would have been obvious to one skilled in the art at the time of the invention to include through-holes in Hellsten as taught by Hewlett in order to strengthen the blocks."

Claim 10 has been canceled from the application.

Claims 3, 6, 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hellsten (SE 9603040-8) in view of <http://www.eren.doe.gov/buildings/documents/strawbale.htmls>, (hereinafter "Webpage"). The Examiner asserted "Hellsten teaches the claimed invention except for the specific moisture content of the straw. It would have been obvious to one skilled in the art at the time the invention to limit the straw blocks of Hellsten to a moisture content of 14% or less as taught by the Webpage in order to make an optimal straw block."

Combining the Hellsten method for producing building blocks of compressed straw with the Webpage disclosure containing a moisture content of 14% or less would not yield a building block including a binder and a moisture inhibitor in contact with the stalks, as set forth in amended independent claim 11, wherein canceled claim 12 subject matter is presently incorporated. In lieu of the arguments previously rendered, Applicants stand by the assertion that the Examiner has relied upon incorrect fact findings, the findings do not make sense because the Examiner has not explained how a microwave functions as a moisture inhibitor. Applicants respectfully reiterate that such knowledge is not obvious to one skilled in the art and request that the Examiner provide sound evidentiary support for the allegation that a microwave is a moisture inhibitor. When making an obviousness rejection, Office personnel must ensure that the written record includes findings of fact concerning the state of the art and the teachings of the references applied. Applicants re-assert that the Examiner has not rendered proper findings via Graham nor has the Examiner performed a proper analysis under KSR and set forth arguments to address the subject matter in claim 11.

Accordingly, a prima facie case of obviousness has not been established, and as such, Applicant respectfully requests the allowance of amended claim 11.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hellsten (SE 9603040-8) and the Webpage and in further view of Hewlett (US 1,604,097) as applied to claims 11 and 12 above. The Examiner asserted "the combination of Hellsten and the Webpage teach the claimed invention except for providing through holes. It would have been obvious to one skilled in the art at the time of the invention to include through-holes in Hellsten as taught by Hewlett in order to strengthen the blocks."

Combining the cited references still would not yield a building block including a binder and a moisture inhibitor in contact with the stalks, as set forth in claim 11, from which canceled claim 13 depended. As submitted, the subject matter of canceled claim 13 has been incorporated into claim 11. As previously asserted by Applicants, the Examiner has not met the burden of proof established in KSR and set forth arguments to address all of the features of the claim i.e. explain how does a microwave function as a moisture inhibitor, nor has the Examiner met the Graham threshold for upholding an obviousness rejection.

Accordingly, a prima facie case of obviousness has not been established, and as such, Applicant respectfully requests the allowance of amended claim 11.

Claim 21 is amended to include independent claims 22-26. The arguments set forth above also apply here. There is insufficient fact finding and reasons applying the facts under KSR to sustain the Section 103 rejection. Withdrawal of the rejection is respectfully requested.

Applicants respectfully submit that the Examiner prematurely made this action final. Pursuant to MPEP 706.07, the language reads as:

"Before final rejection is in order a clear issue should be developed between the examiner and applicant. While the rules no longer give an applicant the right to amend as often as the examiner presents new references or reasons for rejection, present practice does not sanction hasty and ill-considered final rejections. The examiner should never lose sight of the fact that in every case the applicant is entitled to a full and fair hearing, and that a clear issue between applicant and examiner should be developed."

Accordingly, Applicants respectfully request that the finality of the rejection be withdrawn.

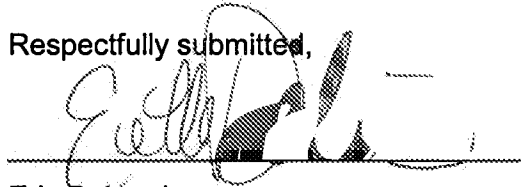
### **CONCLUSIONS**

In view of Applicants' amendments and remarks, the Examiner's rejections are believed to be rendered moot. Accordingly, Applicants submit that the present application is in condition for allowance and requests that the Examiner pass the case to issue at the earliest convenience. Should the Examiner have any question or wish to further discuss this application, Applicant requests that the Examiner contact the undersigned at (248) 292-2920.

If for some reason Applicant has not requested a sufficient extension and/or have not paid a sufficient fee for this response and/or for the extension necessary to prevent the abandonment of this application, please consider this as a request for an extension for the required time period and/or authorization to charge our Deposit Account No. 50-1097 for any fee which may be due.

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Respectfully submitted,



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